

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) MB Docket No. 17-105
Commission Modernization)
of Media Regulation Initiative)

COMMENT

by
ROMAR COMMUNICATIONS INC.
&
ROBERT A. LYNCH

To: The Commission:

I. Introduction:

Romar Communications Inc. (Romar) and its President, Robert A. Lynch (Lynch), both of 175 Gray Road, Ithaca, NY 14850, hereby submit this COMMENT in the above-referenced Commission proceeding, its Modernization of Media Regulation Initiative (the “Initiative”). As stated in its Public Notice of May 18, 2017,¹ the Commission has chosen to commence a top-to-bottom review of its rules applicable to radio, television, cable and satellite television providers. As stated in the Public Notice’s introductory paragraph:

“By initiating this review, the Commission takes another step to advance the public interest by reducing unnecessary regulations and undue regulatory burdens that can stand in the way of competition and innovation in media markets.... We also seek input regarding specific rules from which small businesses should receive regulatory relief.”²

The Commission seeks public input, adding, “We will take such comments into consideration in determining whether to propose modifying or eliminating the rules brought to our attention.”³ Accordingly, Romar and Lynch will provide suggestions as to the technical and non-technical regulations which should either be eliminated or modified so as to remove outdated and burdensome impediments to growth, innovation and job creation, particularly by smaller communications providers. We will limit our scope of review to the field of our expertise, radio broadcasting.

II. Commenters’ Background:

Romar Communications Inc., incorporated in 1987, is currently the permittee for a New

¹ See FCC 17-58, released May 18, 2017.

² Public Notice: *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105 (hereinafter *Media Regulation Initiative*) para. 1.

³ *Id.*

AM broadcast station, WTRS, to be licensed to Lansing, New York.⁴ Romar's construction permit, authorized in April 2016, followed a challenging 29-year effort by Romar's owners, directors, and managers, a brother-and-sister team with experience in the Ithaca, NY broadcast market, to secure, through successive and often-delayed applications, a new AM authorization.⁵

Robert A. Lynch, Romar's president, has invested the overwhelming majority of his professional career in the fields of radio broadcasting and broadcast support. As a broadcast journalist, operations manager, and for nearly five years of that tenure a traffic reporter, serving at radio stations in Ithaca and Rochester, New York, Lynch was directly involved with the programming and operations side of radio. Thereafter, for 25 years, Lynch transitioned to broadcast station design as a staff engineer with Independent Broadcast Consultants, Inc., Trumansburg, NY. He gained a thorough knowledge of the broadcast technical rules; their evolution; and in some instances, those regulations' inability to adapt to changing market conditions. In large part, Lynch designed the technical application of the WTRS CP, now awaiting construction. Lynch is at present, in part, an independent broadcast allocations engineer.

III. Proposed Regulatory Modifications:

Other commenters in this Initiative may advance good ideas which the Commission should consider, suggestions that Romar and Lynch have either not thought of or have, by choice, relegated to a lesser priority. As we stated in our contemporaneously-filed Commission comment in the rulemaking proceeding under MB Docket No. 17-106, the proposed elimination of the main studio rule, every old rule needs "its cobwebs dusted off from time to time."⁶ With that constructive, yet cautious attitude—in other words, "Don't break the lamp in the process"—let's get out our feather duster and proceed:

1. Rule: 47 C.F.R. §73.3598 Period of construction.

Current Text: (a) Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed....

(e) Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

Proposed Revision: [Option #1]: (a) Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new TV, AM, FM or

⁴ BNP-20020522AAM; Facility ID No. 136961; Granted: April 29, 2016.

⁵ See Construction Permit Applications BP-19870331AH; ARN-900405BX; BNP-19971126AAH.

⁶ See Formal Comment by Romar Communications Inc. and Robert A. Lynch, MB Docket No. 17-106, *Elimination of the Main Studio Rule*, submitted June 30, 2017, ¶ 7.

International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of ~~three~~ five years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed....

[Underscored text replacing that struck out; five years substituted for three years].

[47 C.F.R. §73.3598(e) unchanged]

Proposed Revision: [Option #2]:

[47 C.F.R. §73.3598(a) unchanged]

[47 C.F.R. §73.3598(e)]: Any construction permit for which construction has not been completed and for which an application for license has not been filed, upon submission of application therefor and payment of the requisite filing fee shall be eligible for a 24-month extension of construction permit, should the Commission deem such extension to be in the public interest. After said extension has expired, or should a timely extension have not been requested by the permittee, the construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon the later of the original permit's or its subsequently authorized permit extension's expiration without any further affirmative cancellation by the Commission.

Discussion: Romar and Lynch believe good cause exists for the Commission to extend the period of a construction permit's implementation from three to five years, or alternately, to allow the permittee to apply for a two-year extension of construction permit unless such extension is deemed by Commission staff to be contrary to the public interest.⁷ We propose that such extended periods of construction and/or opportunities for extension be made retroactive to those construction permits for either new or modified facilities currently outstanding on the date of the modified rule's adoption.

When Romar's principals began their pursuit of a broadcast authorization, the period of an original construction permit was 18 months, but subject to an indefinite number of six-month extensions upon showings of good cause. The system was subject to abuse, and the procedure held usable spectrum "hostage" while permittees secured property, financing and other necessary resources to build out their investments.

Contemporaneous to the Commission's compliance with its Congressional mandate to transition to an auction-based procedure for awarding new and major change broadcast construction permits,⁸ the Commission revised its rules to replace the shorter, but renewable, permitting system with the current three-year, non-renewable authorization scheme.⁹ The

⁷ We would allow that extension requests, once filed, would be subject to Informal Objections from adversarial parties pending those extensions' approval. However, to avoid abuse of the objection process, a permit's expiration would be tolled while any Informal Objection was pending before the Commission.

⁸ See Notice of Proposed Rulemaking, MM Docket No. 97-234, *Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, 12 FCC Rcd 22363 (1997).

⁹ See Memorandum Opinion and Order, MM Docket No. 98-43, *1998 Biennial Regulatory Review — Streamlining of Mass Media Applications, Rules and Processes*, FCC 99-267 (1999); Also Report and Order, MM Docket Nos.

apparent rationale was that spectrum now held greater value. It could be sold at auction, rather than be awarded at a comparative hearing. Logic held that if the first permittee could not implement its non-refundable purchase of auctioned spectrum, a second purchaser could be found to do so, thereby accruing additional money for the federal treasury.

But circumstances have changed since the last substantive amendments to Section 73.3598. Recent broadcast auctions have shown that bid prices for newly-authorized facilities have fallen significantly. At the same time, individual entrepreneurs have found it increasingly difficult to secure financing as well as local zoning and related land use approvals; only thereafter to initiate and complete the building of their facilities within the all-too-short 36-month time frame. The tolling options provided under 47 C.F.R. § 73.3598(b) are often inapplicable or inadequate to meet the permittee's circumstances.¹⁰ In Romar's case, a potential major revision of the AM technical rules is now pending and under review in MB Docket No. 13-249.¹¹ Allocation revisions proposed in that pending Docket, if approved, could substantially provide the WTRS CP with important advantages in serving its broadcast market, particularly during daytime hours.¹² Prudence dictates patience. Why build a facility once, only to re-invest potentially hundreds of thousands of dollars later to build it all over again? For many, the clock simply runs too fast.

An additional 24 months, whether as part of an original authorization, or available upon grant of a discretionary, feeable, extension request, would assist entrepreneurs in carrying forward their job-creating investments under a more systematic and organized procedure, one devoid of the *five-alarm fire drill* emergency deadline-dashing haste that often typifies construction permit buildouts under the present dictates of §73.3598.

2. Rule: 47 C.F.R. §73.37(a) Applications for broadcast facilities, showing required:

Current Text: (a) No application will be accepted for a new station if the proposed operation would involve overlap of signal strength contours with any other station as set forth below in this paragraph; and no application will be accepted for a change of the facilities of an existing station if the proposed change would involve such overlap where there is not already such overlap between the stations involved:

98-43 and 94-149, *Streamlining of Mass Media Applications, Rules and Processes, and Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 13 FCC Rcd 23,056 (1998).

¹⁰ This comment's writer is not an attorney and will not attempt to interpret the Rules. However, his understanding is that the tolling provisions of 47 C.F.R. § 3598(b)(2) are highly limiting to the permittee when delay "relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement ..." is the result of inaction by federal, state or local legislative or administrative agencies, rather than by a "court of competent jurisdiction." [See 47 C.F.R. § 3598(b)(2)]. Whereas, judicial delays can toll a construction permit's expiration date; administrative roadblocks imposed by municipal councils or zoning boards, unless challenged in court, usually do not toll a construction permit's completion deadline.

¹¹ See First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, MB Docket No. 13-249, *Revitalization of the AM Radio Service*, FCC 15-142 (2015) ¶¶ 49-65.

¹² *Id.* ¶¶ 63-65.

[The following table is from Part 73.37(a) of the current Rules]

Frequency separation (kHz)	Contour of proposed station (classes B, C and D) (mV/m)	Contour of any other station (mV/m)
0	0.005 0.025 0.500	0.100 (Class A). 0.500 (Other classes). 0.025 (All classes).
10	0.250 0.500	0.500 (All classes). 0.250 (All classes).
20	5 5	5 (All classes). 5 (All classes).
30	25	25 (All classes).

Proposed Revision:

[substitution for the following table of frequency adjacency-determinate proposed-to-existing (or otherwise proposed) signal strength contours:]

Frequency Separation (kHz)	Contour of proposed station (classes B, C and D) (mV/m)	Contour of any other station (mV/m)
0	0.005 0.100 2.0	0.100 (Class A) 2.0 (Other classes) 0.100 (Other classes)
10	0.500 2.0	0.500 (Class A) 2.0 (Other classes)
20	25.0	25.0 (All classes)

Discussion: The above-stated proposed revision of the daytime AM groundwave protection rules is that proposed in the Further Notice of Proposed Rule Making in MM Docket No. 13-249, (the “Further NPRM”), adopted October 21, 2015.¹³ Nearly two years following the Further NPRM’s revised daytime allocation standards’ proposal, the new criteria have yet to receive action. Romar and Lynch argue that now is the time to act.

The revised criteria proposed for § 73.37(a) were based on the Commission staff’s common sense logic and understanding of the realities of the AM marketplace, the prevalence of electronic interference in the natural and man-made environment, and the reception limitations of the modern-day AM receiver. Stated the Commission:

“[R]educing protection to all stations to the 2 mV/m contour allows AM broadcasters greater flexibility to make station modifications designed to increase signal strength to their primary service areas.”¹⁴

¹³ First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, MB Docket No. 13-249, *Revitalization of the AM Radio Service*, FCC 15-142 (2015) ¶¶ 49-65.

¹⁴ *Id.* ¶ 64.

The proposed rule modification would reduce the radius of the protected daytime service contour for Class B, C, and D stations (together comprising the overwhelming majority of AM stations) from the weaker 0.5 mV/m contour to the stronger 2.0 mV/m contour. The daytime groundwave protection requirements for all high-powered, clear channel Class A stations would remain unchanged. Daytime groundwave protection standards for second-adjacent channel stations would be relaxed; protection of third-adjacent channel stations would be eliminated.

Romar and Lynch could, if they chose, “tweak around the edges” of these proposed criteria.¹⁵ But for purposes here, primarily for simplicity and to expedite action, we’re willing to leave the revisions as the Commission proposed them. The co-channel and first-adjacent channel daytime standards are the most important to revise; those changes will do AM broadcasters the most good. Relaxation of the current stricter rules covering first- and second-adjacencies would enable struggling new and existing AM broadcasters actually to serve *more* audience within their licensed markets and to serve each of their listeners better with a stronger, more competitive daytime signal.

As we are all aware—most painfully, the AM broadcaster is aware—that AM reception *ain’t what it used to be!* AM receivers, particularly those in automobiles, are built cheap. Static from poorly-maintained power lines and personal electronics, particularly computers, overpowers many AM stations even within those stations’ 5 mV/m city-grade community contours. The expectation of listenable reception out to a station’s weak 0.5 mV/m contour, the current §73.37(a) standard, is often a laughable impossibility. About the last worry facing the modern-day broadcaster is the fear that some distant-market station will encroach upon his own station’s peripheral contour with a nearly undetectable level of interference, something little more than *one-twentieth* the signal strength of his own. The owner is far more frustrated about a typical car’s ignition noise or the whine from a computer next door.

The Commission’s most-recent Second Report and Order in MB Docket No. 13-249, adopted in February 2017, dealt only with the use of FM translators by AM broadcasters.¹⁶ Romar and Lynch have no quarrel with the Second Report and Order’s provisions. However, the Second Report and Order failed to address the more significant issues affecting daytime and nighttime AM allocation. We suspect that the reason for the Commission’s inaction arose from the Further NPRM’s more sweeping—some might say, draconian—rule changes affecting

¹⁵ For example, we see no significant advantage to be gained by relaxing the daytime groundwave protection requirements for stations on second- or third-adjacent channels. Only in the most congested of markets is second- or third-adjacent interference likely to be an allocations problem. The greater broadcaster benefit would be accrued by relaxation of the technical standards for *co-channel* interference, particularly interference *received* by the broadcast applicant.

Accordingly, the Commission could consider modification of the table in 47 C.F.R. §73.37(a) such that an applicant may propose to protect only his own daytime signal to the 2.0 mV/m contour, (and thus receive a level of daytime interference currently prohibited by the rules); yet nonetheless continue to be required to protect other co-channel stations to the more stringent 0.5 mV/m daytime groundwave contour. By so doing, the applicant would, in effect, be choosing to compromise only its own service contours, not those of other stations.

¹⁶ See Second Report and Order, MB Docket No. 13-249, *Revitalization of the AM Radio Service*, FCC 17-14 (2017).

nighttime allocation standards.¹⁷ Most significantly, the October 2015 Further NPRM would have eliminated nighttime skywave protection for Class A stations beyond those stations' 0.1 mV/m daytime groundwave service contours, a monumental change.¹⁸

Protected Class A nighttime skywave coverage has been a regulatory fixture since the earliest days of AM radio. Well-known heritage AM powerhouses, many owned by America's most powerful and influential broadcast chains, would have much to lose under the Further NPRM's proposal. Romar and Lynch acknowledge that the nighttime revisions may reasonably warrant further study. Perhaps they should be rejected.¹⁹ But we believe the afore-stated changes to the § 73.37(a) daytime rules are far less controversial, and more manageable to implement. They're also in greater need.

In short, Romar and Lynch recommend that the Commission uncouple the revisions of the §73.37 daytime allocation standards as advanced in the Further Notice of Proposed Rule Making in MM Docket No. 13-249 from the remainder of that docket. Then it should adopt the changes under a new Third Report and Order; adopt the changes soon; and leave the more sweeping revision of the nighttime allocation rules for another day.

3. Rule: 47 C.F.R. §1.1151 Authority to prescribe and collect regulatory fees.

Current text: Authority to impose and collect regulatory fees is contained in title VI, section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 397), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

Proposed Revision: *[Grant a small market exception from assessment of broadcast regulatory fees under a formula to be determined by the Commission.]*

Discussion: In its most recent Notice of Proposed Rulemaking, in MD Docket No. 17-134, the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2017, the Commission stated:

“The Commission is required by Congress to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of its appropriation. Regulatory fees, mandated by Congress, are collected ‘to recover the costs of ... enforcement activities, policy and rulemaking activities, user information services, and international activities.’ Regulatory fees are to ‘be derived by determining the full-time equivalent number of employees performing’ these activities, ‘adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee

¹⁷ First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, MB Docket No. 13-249 (*supra*) ¶¶ 49-62.

¹⁸ Current nighttime protection extends to the 0.5mV/m 50% skywave contour, a radius of many hundreds of miles.

¹⁹ Without delving too deeply into the engineering physics of nighttime broadcast allocation, compliance with the technical standards advanced by the Commission in its Further NPRM (skywave protection of a 0.1 mV/m contour) could be difficult for broadcast applicants to accomplish under the Commission's current engineering algorithms.

by the Commission's activities...."²⁰

Romar and Lynch are fully cognizant of the Commission's statutory obligation. Yet in reviewing the comments of other parties to this Initiative, we acknowledge and empathize with the plight of one struggling rural broadcaster, Damon Collins, President of Blackbelt Broadcasting Inc., Livingston, Alabama. In his comment, Collins stated in part:

"We respectfully request that the current proposed regulatory fees (and structure) be reevaluated, reduced, or waived for certain classes of small market radio stations based on size class, and (or) revenue. We ask you to consider the burden that increasing regulatory fees has on many small rural AM and FM broadcasters."²¹

Collins stated he has two Class A FM stations, in communities with populations of 3,400 and 1,300, respectively.²² Yet, under the proposed 2017 FY 2017 regulatory fee schedule, Blackbelt would be assessed \$1,150 this year for each station.²³ In the smaller of those two towns, the proposed fee would come to about a dollar-a-head. It's unlikely Collins will pass the hat. Those checks to the Commission will need to come out of cash flow; money that in our judgment would be better spent on personnel, equipment, a meaningful studio presence, or coverage of the local town council or high school football game.

The Commission's hands may be tied by Congress. Yet this commenter has always sensed a philosophical disconnect between regulatory fees and the public interest nature of broadcasting. Is it sufficient for the Commission to determine its assessment calculus on "factors that are reasonably related to the benefits provided to the payer of the fee?" Or should a station's ability to pay those fees also be considered? True, the regulatory fee assessments are keyed to market size. But for owners like Mr. Collins, operating in the tiniest of towns, is the formula fair?

Unlike common carriers, satellites, or the plethora of new wireless services regulated today, radio broadcasters are duty-bound by the Commission to give back to their communities. They return value in the form of public affairs; emergency information; and one would hope, live, local talent. The Commission's assessment formulae don't specifically account for broadcasters' unique obligations. Perhaps they should. Perhaps other, less community-obligated parties (like wireless services, common carriers, or satellite/cable television) should subsidize the regulatory burdens of radio and TV, especially in communities where those services are most difficult to underwrite, yet arguably most needed by the public. Perhaps there should be a small market exception for assessment of regulatory fees. Perhaps community servants like Mr. Collins should get a break.

²⁰ Notice of Proposed Rulemaking, MD Docket No. 17-134, *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, FCC 17-62, ¶ 2 (footnotes omitted).

²¹ See Comment of Blackbelt Broadcasting, Inc., MB Docket 17-105, (FCC Comment ID: 1062432204275), June 26, 2017, para. 2.

²² *Id.* (stations WLYB FM, Livingston, AL and WRYC FM, Frisco City, AL).

²³ See Notice of Proposed Rulemaking, MD Docket No. 17-134, *supra*, APPENDIX B, p. 3 (fee calculated for Class A FM stations in the lowest population category).

4. Rule: 47 C.F.R. §73.1125 Station main studio location.

Current Text: (a) Except for those stations described in paragraph (b) of this section, each AM, FM, and TV broadcast station shall maintain a main studio at one of the following locations:(1) Within the station's community of license;

(2) At any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or

(3) Within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1)....

Proposed Revision: *[No change is proposed in the text of 47 C.F.R. § 73.1125. However, the Commission's interpretation of a "meaningful management and staff presence"²⁴ at the required main studio should be redefined so as to eliminate the requirement for duplicative staffing by employed personnel and management.]*

Discussion: Romar and Lynch have discussed this issue at length in the contemporaneously filed Formal Comment in response to the Notice of Proposed Rulemaking in MB Docket No. 17-106,²⁵ said NPRM proposing elimination of the afore-referenced main studio location rule. We will not repeat those arguments here, but rather direct the Commission and other commenting parties to our remarks on file in that companion proceeding.

To summarize those stated opinions, however, we believe good reason exists for retention of the main studio rule as mandated by Section 73.1125. Nonetheless, we also believe the Commission's interpretation of main studio staffing requirements, particularly its imposition of the so-called *Jones Eastern* decision of 1991,²⁶ has become unduly burdensome for the smaller broadcaster and is no longer necessary or prudent due to the modernization of public file retention requirements²⁷ and the evolving state of contemporary broadcasting.

5. 47 C.F.R. §73.404(a) Interim hybrid IBOC DAB operation.

Current Text: (a) The licensee of an AM or FM station, or the permittee of a new AM or FM station which has commenced program test operation pursuant to §73.1620, may commence interim hybrid IBOC DAB operation with digital facilities which conform to the technical specifications specified for hybrid DAB operation in the *First Report and Order* in MM Docket No. 99-325, as revised in the Media Bureau's subsequent *Order* in MM Docket No. 99-325....

An AM or FM station may transmit IBOC signals during all hours for which the station is licensed to broadcast.

Proposed Revision: (a) The licensee of an AM or FM station, or the permittee of a new AM or FM station which has commenced program test operation pursuant to §73.1620, may commence interim hybrid IBOC DAB operation with digital facilities which conform to the

²⁴ *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5034, 5026 (1988).

²⁵ See Formal Comment by Romar Communications Inc. and Robert A. Lynch, MB Docket No. 17-106, *supra*.

²⁶ Memorandum Opinion and Order, *Application for Review of Jones Eastern of the Outer Banks, Inc. Licensee, Radio Station WRSF(FM) Columbia, North Carolina*, 6 FCC Rcd 3615 (1991).

²⁷ See Notice of Proposed Rulemaking, MB Docket 17-106, *Elimination of Main Studio Rule*, FCC 17-59 (2017), ¶ 1 n.4.

technical specifications specified for hybrid DAB operation in the *First Report and Order* in MM Docket No. 99-325, as revised in the Media Bureau's subsequent *Order* in MM Docket No. 99-325....

An ~~AM or~~ FM station may transmit IBOC signals during all hours for which the station is licensed to broadcast. An AM station may transmit IBOC signals only during those daytime hours for which the station is licensed to broadcast.

Discussion: Ten years ago, in 2007, with its Second Report and Order in MM Docket No. 99-325 (the “Second R & O”),²⁸ the Commission extended to nighttime (in addition to daytime) operation the optional use of In Band On Channel (“IBOC”) Digital Audio Broadcasting (“DAB”) Systems by AM broadcasters.²⁹ Based on anecdotal evidence, Romar and Lynch have concluded that since the date those hybrid analog-digital transmissions first made their debut, the listening public’s acceptance of IBOC on AM has been minimal. Some critics have branded AM IBOC as an utter failure, a repeat of the disaster that was AM stereo decades earlier.

Meanwhile, since the extension of IBOC to AM nighttime operation, many analog AM licensees have found themselves “hammered” with coverage-constricting co-channel, and especially adjacent channel, interference. Licensees have found their preciously-small nighttime interference-free contours eroded still further. In many instances, Commission-calculated predictions of interference-free nighttime service have become a joke. Sadly, the most prevalent use of AM IBOC has been by the 50-kilowatt AM blast furnaces on clear channels.³⁰ The adjacent channel “hash” they generate has destroyed the listenability of many a station and worsened the ability of smaller, stand-alone AM operators to compete. Many of these now-victimized licensees had secured their nighttime authorizations long before IBOC had been invented. The interference they’re suffering now is nothing they’d ever bargained for.

Romar and Lynch propose that the Commission conduct a Notice of Inquiry (“NOI”) to evaluate the continued viability of IBOC on the AM band; and most particularly to ask whether AM stations which broadcast hybrid IBOC DAB signals should continue to employ the technology at night, the period when IBOC’s skywave interference is most destructive.

Questions valid to be raised in such an NOI proceeding should include:

1. Has the market penetration of IBOC AM receivers within the past decade been significant enough to justify AM IBOC’s continued employment as an authorized mode of transmission?

²⁸ See Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, MM Docket No. 99-325, *Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service*, FCC 07-33 (2007).

²⁹ *Id.* ¶¶ 89-90.

³⁰ A prime example of this phenomenon has been observed by this writer in upstate New York, a location about equa-distant from two 50 kW. stations on clear channels; WBZ, Boston, MA and KDKA, Pittsburgh, PA. Both these stations, on adjacent frequencies, employ IBOC at night. Seldom can one listen to both stations at the same time. As nighttime skywave waxes and wanes, first one station’s IBOC interference cancels the analog signal of the other, then vice versa. If WBZ and KDKA each hold the Commission’s authorization for interference-free nighttime skywave coverage, IBOC impedes the attainment of the Commission’s regulatory objectives.

2. Have AM broadcasters embraced IBOC sufficiently to warrant its continuation? Are additional broadcasters likely to employ IBOC in the future? Have some chosen to abandon the technology as a failure? Even with limited broadcaster acceptance, do the benefits of IBOC outweigh the interference drawbacks?
3. Have analog nighttime AM broadcasters been adversely impacted by the IBOC operations of other stations? How many? To what extent have they been harmed? Are any tradeoffs from IBOC's current or potential benefits sufficient to justify this adverse impact?
4. How have IBOC transmissions affected the listening public's perception of AM Radio? Have nighttime listeners turned away from AM radio because of this newfound interference whose source they cannot identify, but whose prevalence has prompted them to abandon their once-favorite stations?
5. To what extent has the authorized availability of FM translators for AM broadcasters mitigated the damage imposed by IBOC AM interference? On the other hand, has the availability of such translators provided DAB broadcasters an alternative means to deliver higher fidelity programming to their audiences such that IBOC is now unnecessary and financially burdensome? And what is the impact upon AM broadcasters for whom an FM translator may not be available?

These questions and others deserve answers. A Commission NOI would initiate a reasoned, much-needed debate on this issue. IBOC has been given more than a full decade to prove itself on the AM band... and in the marketplace. Has it succeeded or failed?

IV. Conclusion:

Romar and Lynch encourage the Commission to consider seriously each of the issues we have constructively raised in response to the Commission's Initiative. When and if the Commission seeks to offer any of these matters for public comment in accordance with the agency's customary procedures, we will elaborate on them at that time. We believe the listening public and also the broadcasters who serve them would benefit from the deregulatory initiatives we have advanced.

Respectfully submitted,

July 3, 2017

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